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Junaidi bin Bambang v Public Prosecutor

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COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO C-05–41 OF 2005
SURIYADI, HASAN LAH AND AHMAD MAAROP JJCA
29 OCTOBER 2010

C

Criminal Law — Murder — Appeal against conviction and sentence — Whether appellant fit to stand trial — Whether there was misdirection by trial judge — Whether prosecution proved its case against appellant beyond reasonable doubt — Whether appeal ought to be dismissed

D

Evidence — Confession — Extra-judicial confession made via letters written by appellant — Whether confessions true and reliable — Whether confessions supported by other corroborative evidence

E

Evidence — Statement — Cautioned statement — Voluntariness — Whether cautioned statement properly admitted

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The appellant was an Indonesian immigrant working in Malaysia, and living in an *orang asli* settlement in Pekan with his Malaysian wife and four children. At the end of 2001, when the appellant's wife went to work in Malacca she took along with her the eldest of the couple's four daughters, and left the younger three daughters in the care of the appellant. When the appellant's wife returned to her house on 28 February 2002, she found the front door locked with a padlock. She then entered via the rear door and saw the appellant lying in the kitchen frothing in the mouth. The appellant's wife became scared and ran out for help. She returned with her sister and again entered the house through the rear door to find the appellant lying on the floor vomiting, and her three younger daughters ('the three victims') lying motionless in the family hall. The police officer who arrived to investigate the incident found the appellant, who appeared weak, lying near the three victims. The appellant who complained of vomiting and diarrhea was sent to the Kuantan Hospital. The investigating officer ('the IO') who visited the scene of the crime saw two pieces of plywood with writings in red paint on them, in front of the house, and three documents on a table in the family hall. The IO also observed that there were strangulation marks on the necks of the three victims and bound marks on their hands. A piece of green rope, a can of red paint and a paintbrush were all recovered from the scene of the crime. A post mortem of the three bodies of the victims showed that the cause of their deaths was asphyxia due to strangulation. When the appellant was discharged from the hospital, he was charged with three counts of

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murder in the High Court. At the trial, the government chemist, who carried out an analysis of the red paint and the paintbrush that were recovered from the scene of the crime, testified that it was likely that the paintbrush and the red paint was used to write on the two pieces of plywood found in the front of the appellant's house. The government document examiner testified that based on his examination of the letters and addressed envelopes ('the documents') found at the scene of the crime, he was of the opinion that the handwritings on these documents belonged to the appellant. The appellant's cautioned statement, admitting that he strangled the three victims with nylon ropes after which he consumed pesticide, was also admitted. The appellant who elected to give evidence on oath claimed that when he left the house the three victims were sleeping in the family hall but that when he returned about an hour later he found them dead and that was why he had consumed poison. He denied killing the three victims and then trying to commit suicide. The trial judge found the appellant's cautioned statement to be consistent with the evidence of the witnesses for the prosecution and the other independent evidence adduced by the prosecution and found the appellant's defence to be unreasonable as it contradicted with his admission. The trial judge also found that the appellant had confessed to the killing of the three victims via the contents of the letters found at the scene of the crime ('the extra-judicial confessions') which were found to be in the handwriting of the appellant. The appellant was convicted on all the three charges and was sentenced to death by hanging. This was the appellant's appeal against that conviction and sentence. The appellant submitted that the trial judge had erred in his decision as to whether the appellant was fit to stand trial by not giving due and proper consideration to this issue. The appellant further submitted that because of the circumstances in which his cautioned statement was recorded there was doubt as to whether the statement was voluntarily given by the appellant. According to the appellant the confession was not given voluntarily because he was threatened and assaulted into making the cautioned statement that he did not understand. The appellant also submitted that the evidence of the government document examiner had no evidential value at all as he did not give his reasons for his finding.

Held, dismissing the appeal against conviction and sentence:

(1) After evaluating the appellant the trial judge was satisfied that he could answer the questions posed to him well and that he had a good memory. Further, the appellant did not have any history of mental disorder. As such, the test applied by the trial judge in determining the appellant's fitness to stand trial could be regarded as a 'reasonable and common sense test', which was proper and sufficient under the circumstances. Consequently there was no merit in the complaint by the appellant that the trial judge did not properly determine the issue as to whether the appellant was fit to stand trial (see paras 30–32).

(2) In the present case, the trial judge found that the cautioned statement was given voluntarily and that it need not be explained to the appellant because he understood it. After carefully scrutinising the evidence adduced in the trial within a trial it was found that the cautioned statement was properly admitted. The trial judge had properly considered the evidence and the law and had come to a correct finding. The appellant's contention on the admissibility of the cautioned statement was thus rejected (see paras 33, 42 & 44).

(3) The government document examiner, as rightly found by the trial judge, had clearly stated sufficient reasons to support his conclusions. Further, the document examiner's evidence was corroborated by the evidence of the appellant's eldest daughter who was familiar with the appellant's handwriting. There was no misdirection by the trial judge on this point (see para 50).

(4) The circumstantial evidence in the instant case also corroborated the extra-judicial confessions made via the contents of the letters found at the scene of the crime. The trial judge was correct to find that the appellant's defence when tested against the totality of the evidence was unreasonable and inconsistent. Thus, the trial judge had correctly concluded that the appellant had failed to raise any reasonable doubt in the prosecution case and that the prosecution had proved its case against the appellant beyond reasonable doubt (see paras 57–58).

[Bahasa Malaysia summary

Perayu seorang pendatang Indonesia yang bekerja di Malaysia, dan tinggal di penempatan orang asli di Pekan bersama isteri dan empat orang anaknya yang berwarganegara Malaysia. Di akhir tahun 2001, apabila isteri perayu bekerja di Melaka dia telah membawa bersama anak sulung daripada empat orang anak perempuan mereka, dan meninggalkan tiga orang anak perempuan yang lain dalam jagaan perayu. Apabila isteri perayu pulang ke rumahnya pada 28 Februari 2002, dia mendapati pintu depan dikunci dengan mangga. Dia kemudian telah masuk melalui pintu tepi dan melihat perayu terbaring di dapur dengan mulut berbuih. Isteri perayu menjadi takut dan lari keluar meminta pertolongan. Dia kembali bersama kakaknya dan sekali lagi masuk rumah melalui pintu tepi dan menjumpai perayu terbaring di atas lantai muntah dan tiga anak perempuannya ('tiga mangsa') terbaring kaku di ruang keluarga. Pegawai polis yang tiba untuk menyiasat kejadian mendapati perayu yang kelihatan lemah, terbaring berdekatan tiga mangsa itu. Perayu yang mengadu muntah dan cirit-birit telah dihantar ke hospital Kuantan. Pegawai penyiasat ('IO') yang melawat tempat kejadian jenayah melihat dua batang kayu papan lapis dengan tulisan bercat merah di atasnya, di depan rumah itu, dan tiga keping dokumen di atas meja di ruang keluarga. IO juga memerhati bahawa terdapat kesan cekikan di leher tiga mangsa itu dan tanda ikatan di tangan mereka. Seutas tali hijau, satu tin cat merah dan berus cat semuanya

telah ditemui di tempat kejadian jenayah itu. Post mortem ke atas tiga mayat mangsa itu menunjukkan sebab kematian mereka adalah asfiksia akibat cekikan. Apabila perayu keluar daripada hospital, dia telah dituduh dengan tiga pertuduhan membunuh di Mahkamah Tinggi. Semasa perbicaraan, ahli kimia kerajaan, yang menjalankan analisis ke atas cat merah dan berus cat dan cat merah yang digunakan untuk menulis di atas dua keping papan lapis yang ditemui di depan rumah perayu. Pemeriksa dokumen kerajaan telah memberi keterangan bahawa berdasarkan pemeriksaannya ke atas surat-surat dan sampul surat ('dokumen-dokumen tersebut') yang ditemui di tempat kejadian jenayah, dia berpendapat bahawa tulisan tangan atas dokumen-dokumen tersebut adalah milik perayu. Kenyataan beramaran perayu, yang mengakui bahawa dia telah mencekik tiga mangsa itu dengan tali nilon selepas dia minum racun perosak, yang juga diterima. Perayu yang memilih untuk memberi keterangan bersumpah mendakwa bahawa apabila dia meninggalkan rumahnya tiga mangsa itu sedang tidur di ruang keluarga tetapi apabila dia pulang lebih kurang sejam kemudian dia mendapati mereka telah meninggal dunia dan oleh sebab itu dia telah minum racun itu. Dia menafikan telah membunuh tiga mangsa itu dan kemudian cuba membunuh diri. Hakim perbicaran mendapati kenyataan beramaran perayu adalah konsisten dengan keterangan saksi-saksi bagi pihak pendakwaan dan keterangan berasingan lain yang dikemukakan oleh pendakwaan dan mendapati pembelaan perayu tidak munasabah kerana ia bertentangan dengan pengakuannya. Hakim bicara juga mendapati perayu telah mengaku membunuh tiga mangsa itu melalui kandungan surat-surat yang ditemui di tempat kejadian jenayah ('pengakuan-pegakuan luar kehakiman') yang didapati dalam tulisan tangan perayu. Perayu telah disabitkan untuk ketiga-tiga pertuduhan dan telah dijatuhkan hukuman gantung sampai mati. Ini adalah rayuan perayu terhadap sabitan dan hukuman tersebut. Perayu berhujah bahawa hakim bicara telah khilaf dalam keputusannya berhubung sama ada perayu sihat untuk dibicarakan dengan tidak memberi pertimbangan yang wajar dan patut berhubung isu ini. Selanjutnya perayu berhujah bahawa berdasarkan keadaan kenyataan beramarannya telah direkodkan terdapat keraguan sama ada kenyataan itu telah diberikan secara sukarela oleh perayu. Menurut perayu pengakuan itu tidak diberikan secara sukarela kerana dia telah diugut dan diserang untuk membuat kenyataan beramaran itu yang tidak difahaminya. Perayu juga berhujah bahawa keterangan pemeriksa dokumen kerajaan tiada langsung nilai keterangan kerana dia tidak memberikan sebab-sebab penemuannya.

Diputuskan, menolak rayuan terhadap sabitan dan hukuman:

(1) Setelah menilai perayu hakim bicara berpuas hati bahawa dia dapat menjawab soalan-soalan yang dikemukakan kepadanya dengan baik dan bahawa dia mempunyai ingatan yang baik. Selanjutnya, perayu tidak mempunyai sejarah gangguan mental. Oleh itu, ujian yang digunakan

oleh hakim bicara bagi menentukan kesihatan perayu untuk dibicarakan boleh dianggap sebagai 'reasonable and common sense test', yang adalah wajar dan mencukupi dalam keadaan tersebut. Oleh demikian tiada merit dalam aduan perayu bahawa hakim bicara telah dengan tidak wajar menentukan isu-isu sama ada perayu sihat untuk dibicarakan (lihat perenggan 30–32).

(2) Dalam kes ini, hakim bicara mendapati bahawa kenyataan beramaran telah diberikan secara sukarela dan bahawa ia tidak perlu dijelaskan kepada perayu kerana dia memahaminya. Setelah meneliti keterangan yang dikemukakan dalam perbicaraan dalam perbicaraan itu adalah didapati bahawa kenyataan beramaran itu telah diterima sewajarnya. Hakim bicara dengan wajar telah mempertimbangkan keterangan dan undang-undang dan tiba kepada penemuan yang betul. Hujah perayu tentang penerimaan masuk kenyataan beramaran dengan itu ditolak (lihat perenggan 33, 42 & 44).

(3) Pemeriksa dokumen kerajaan itu, seperti yang didapati oleh hakim bicara, telah dengan jelas menyatakan sebab-sebab yang mencukupi untuk menyokong kesimpulannya. Selanjutnya, keterangan pemeriksa dokumen itu telah disokong dengan keterangan anak perempuan sulung perayu yang biasa dengan tulisan tangan perayu. Tiada salah arah oleh hakim bicara di sini (lihat perenggan 50).

(4) Keterangan mengikut keadaan dalam kes ini juga menyokong pengakuan-pengakuan luar kehakiman yang dibuat berdasarkan kandungan surat-surat yang ditemui di tempat kejadian jenayah. Hakim bicara telah membuat penemuan yang betul bahawa pembelaan perayu jika diuji dengan keseluruhan keterangan adalah tidak munasabah dan tidak konsisten. Oleh itu, hakim bicara dengan wajar memutuskan bahawa perayu telah gagal menimbulkan apa-apa keraguan munasabah dalam kes pendakwaan dan bahawa pendakwaan telah membuktikan kesnya terhadap perayu melampaui keraguan munasabah (lihat perenggan 57–58).]

Notes

For cases on cautioned statement, see 7(1) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 2492–2511.

For cases on extra-judicial confessions, see 7(1) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 808–809.

For cases on murder generally, see 4 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 1154–1167.

Cases referred to

Abu bin Hussin v PP [1959] MLJ 5, CA (refd)

Dato Mokhtar bin Hashim & Anor v PP [1983] 2 MLJ 232, FC (refd)

Harold White v The King AIR 1945 PC 181, PC (refd)
Kesavarajah v The Queen (1994) 181 CLR 232 (distd)
Mohd Zaiham bin Mislan v PP [2009] 6 MLJ 737; [2010] 1 CLJ 1, FC (refd)
PP v Misbah bin Saat [1997] 3 MLJ 495; [1998] 1 CLJ 759, HC (distd)
Rex v Dashwood [1943] KB 1, DC (refd)
Sandra Margaret Birch v PP [1978] 1 MLJ 72 (refd)
Sim Ah Song & Anor v Rex [1951] MLJ 150 (refd)
Tan Ewe Huat v PP [2004] 1 MLJ 559; [2004] 1 CLJ 521, FC (refd)
United Asian Bank Bhd v Tai Soon Heng Construction Sdn Bhd [1993] 1 MLJ 182, SC (refd)

Legislation referred to

Criminal Procedure Code s 342, 342(5)
Evidence Act 1950 s 51
Indian Criminal Procedure Code 1973 [IND] s 32

Appeal from: Criminal Trial No 45–9 of 2002 (High Court, Kuantan)

Collin Sequerah (Amer Hamzah Arshad with him) (Zain & Co) for the appellant.
Awang Armadajaya bin Awang Mahmud (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Hasan Lah JCA:

INTRODUCTION

[1] The appellant was charged with three counts of murder in the High Court in Kuantan. At the conclusion of the trial, the appellant was convicted by the High Court on all the three charges and was sentenced to death by hanging. We heard his appeal and dismissed it. We now give our reasons.

[2] The charges preferred against the appellant are as follows:

First amended charge:

Bahawa kamu, di antara 27hb Februari, 2002 jam lebih kurang 8.00 malam hingga 28hb Februari, 2002 jam lebih kurang 3.30 petang bertempat di rumah tidak bernombor, Kampung Dusun, Cini, di dalam Daerah Pekan, di dalam negeri Pahang Darul Makmur, dengan niat membunuh didapati telah menyebabkan kematian terhadap Julaika binti Junaidi (No. S/B: AN 69694) berumur lebih kurang 2 tahun 1 bulan 9 hari, maka kamu dengan ini, telah melakukan suatu kesalahan membunuh yang boleh dihukum di bawah Seksyen 302 Kanun Keseksaan.

Second amended charge:

Bahawa kamu, di antara 27hb Februari 2002 jam lebih kurang 8.00 malam hingga 28hb Februari, 2002 jam lebih kurang 3.30 petang bertempat di rumah tidak bernombor, Kampung Dusun, Cini, di dalam Daerah Pekan, di dalam negeri

A Pahang Darul Makmur, dengan niat membunuh didapati telah menyebabkan kematian terhadap Julaiha binti Junaidi (No. S/B: J 397599) berumur lebih kurang 9 tahun 6 bulan 22 hari, maka kamu dengan ini, telah melakukan suatu kesalahan membunuh yang boleh dihukum di bawah Seksyen 302 Kanun Keseksaan.

Third amended charge:

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Bahawa kamu, di antara 27hb Februari, 2002 jam lebih kurang 8.00 malam hingga 28hb Februari, 2002 jam lebih kurang 3.30 petang bertempat di rumah tidak bernombor, Kampung Dusun, Cini di dalam Daerah Pekan, di dalam negeri Pahang Darul Makmur, dengan niat membunuh didapati telah menyebabkan kematian terhadap Juriyanti binti Junaidi (No. S/B: I 192295) berumur lebih kurang 11 tahun 7 bulan 10 hari, maka kamu dengan ini, telah melakukan suatu kesalahan membunuh yang boleh dihukum di bawah Seksyen 302 Kanun Keseksaan.

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FACTS OF THE CASE

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[3] The relevant facts of the case as found by the learned trial judge from the evidence of the prosecution witnesses at the stage of the prosecution case are as follows. All the three victims were the daughters of the appellant. Julaika was two years and one month old, Julaiha was nine years and six months and Juriyanti was 11 years and 7 months. The tragedy took place at the appellant's house.

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[4] The appellant who was also known as 'Akwang' was an immigrant from Indonesia who came to Malaysia in 1970s. He worked in a sawmill and married with an *orang asli* woman by the name of Leha bt Pegi ('PW7') and they stayed in the *orang asli* settlement at Kampung Dusun, Cini, Pekan. The appellant and PW7 had four children namely Junaidah ('PW8') and the three deceased.

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[5] At the end of 2001 PW7 went to work in Malacca. She took PW8 with her and in Malacca they stayed with PW9, the sister of PW7, who was also known as 'Mah'. The appellant took care of the other three daughters. Later, PW7 also took Julaika to Malacca. The appellant was not happy with the decision of PW7 to take the two daughters to Malacca and this had caused a misunderstanding between the appellant and PW7.

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[6] On 27 February 2002 PW7 came back to Kampong Dusun because her father was sick. Julaika came back with PW9 one day before but PW8 did not come back as she had to work. In the afternoon the appellant took the three daughters to the house of PW7's parent and he and the three daughters then came back to his house in the evening. PW7 did not go back to the family house as she was playing 'ceki' at her parent's house.

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[7] The next day, on 28 February 2002, when PW7 came back to the family house at about 3pm she found that the front door of her house was locked with a padlock and when she called out her children there was no response from them.

[8] PW7 then entered the house via the rear door. She saw the appellant lying in the kitchen with froth at his mouth. The appellant scolded her. PW7 felt scared and she ran out of the house and asked for help.

[9] PW9, on being informed that the appellant had consumed poison, went to the appellant's house. She too entered the house via the rear door. She saw the appellant lying on the floor and the appellant was vomiting. The appellant also scolded her and said to her 'Awak puas hati, Mah? Awak tengok tu, muntah-muntah dan berak-berak!'. SP9 saw the three children ('deceased') lying in the family hall. She went to see the three deceased and found their hands were cold and motionless. SP9 then ran out of the house to get help.

[10] PW11 ('Pidin a/l Pegi') was the younger brother of PW7. He went to the appellant's house after being informed that the appellant had consumed poison. At the appellant's house he forced open the front door and inside the house he saw the three deceased laid down in a row in the family hall. He touched the body of the youngest child and the body was cold. He suspected the three deceased were dead. He asked the appellant what happened to them and according to him the appellant told him there was nothing wrong with them and they were sleeping. PW11 then left the house. Outside he saw PW7 at the back of the house.

[11] PW14 ('Ahmad bin Abdullah'), the officer in charge of Chini Police Station, went to investigate after being informed of the incident. He went to the house at about 4.30pm together with three other policemen. Inside the house he saw the appellant lying near the three deceased. The appellant was weak and he was only wearing an underwear. The three deceased were laid down on a mattress and their bodies were covered with a red blanket. He noticed that there were strangulation marks on the deceaseds' necks. He sent the appellant to the Kuantan Hospital and he also informed the investigating officer, PW13, about the incident.

[12] PW13 came to the house at about 8.15 pm. In front of the house he saw two pieces of plywood with writings on them (exhs P9A and P10A) as shown in the photographs exhs P4(9) and P4(10). Inside the house PW13 found three documents (exhs P12A, P13A and P15A) on a table in the family hall. The three deceased were laid down on a mattress outside a bedroom. PW13 saw strangulation marks on their necks and bound marks on their hands. PW13

also found a piece of green rope (exh P16) on the floor in the kitchen and a can of red paint (exh P8B) with a paintbrush (exh P7A).

[13] A post-mortem conducted on the bodies of the deceased by Dr Zahari bin Noor ('PW5'), the Head of the Forensic Department of Hospital Tengku Ampuan Afzan, Kuantan, showed that the cause of their deaths was asphyxia due to strangulation. PW5 found similar injuries on the three bodies.

[14] The appellant was admitted to the Hospital Tengku Ampuan Afzan on the same day and was examined by Dr Sow Chen Fai ('PW10') at about 11pm. According to PW10 the appellant complained of vomiting and diarrhoea. In PW10's opinion the bleeding in the appellant's stomach could be caused by poison consumption. The appellant was warded for five days and was discharged on 5 March 2002.

[15] Analysis carried out by the government chemist, Khairul Hadi bin Hj Abdul Raof ('PW3'), on the red paint P8B, the paintbrush P7A and the fragments from P9A and P10A showed that the red paint found on P7A and used for writing on P9A and P10A was similar to P8B. PW3 was of the opinion that it was likely that P7A was used to write on P9A and P10A with the red paint from P8B.

[16] The government document examiner, Mr Wong Kong Yong ('PW4'), was asked to examine and analyse the documents, P12A, P12B, P12C, P13A, P14A–C, P15A, P15B and P15C. P12A was an envelope with an address 'kepada Leha/Endon'. P12B was a letter addressed to 'LEHA YANG DIKASIHI' and P12C was a letter addressed to 'ENDON'. Both P12B and P12C were found in P12A. P13A was a letter addressed to 'ASENG/PERISAN'. P14A–C were the samples of the appellant's handwritings.

[17] Based on his examinations and analysis of those documents PW4 was of the opinion that the handwritings on P12A, P12B, P12C and P13A belonged to the appellant. When PW4 was asked to give his opinion on P9A and P10A after examining them in court he concluded that the handwritings on P9A and P10A were made by the same author.

[18] The appellant's cautioned statement ('P18') was admitted as evidence for the prosecution after a trial within trial. In P18 the appellant admitted that he strangled the three deceased with nylon ropes and after that he consumed pesticide.

[19] In defence the appellant elected to give evidence on oath. He did not call any other witness. In his evidence the appellant said, inter alia, that on 27

February 2002 he went to his father-in-law's house with the three deceased. His wife was there. He came back to his house with the three deceased at 9pm. They went to sleep. Next morning, he woke up at 6am and the three deceased woke up at about 7am. The three deceased did not go to school. At about 10am he went to Chini and came back at about 11am. Inside the house he saw the three deceased were sleeping in the family hall. When he tried to wake them up he found them dead. He did not know what to do. He consumed poison. He denied killing the three deceased and tried to commit suicide. He did not see P12A, P13A and P15A. He denied that P9A, P10A, P12B, P12C and P13A were written by him.

FINDINGS OF THE LEARNED TRIAL JUDGE

[20] The learned trial judge held that in P9A, P10A, P12B, P12C and P13A the appellant confessed that he killed the three deceased and he also tried to commit suicide. At p 11 of his grounds of judgment the learned trial judge said:

> Kandungan P9A dan P10A serta surat-surat P12B, P12C dan P13A menerangkan tanpa keraguan yang penulisnya atau Akwang yang dikenalpasti sebagai tertuduh mengakui, melalui perkataan-perkataan yang digariskan di atas, yang dia telah membunuh tiga orang anaknya yang ada bersamanya dan akan turut membunuh dirinya sendiri. Dengan itu dia telah minum racun. Tetapi umurnya masih panjang.

[21] P18 was consistent with the evidence of the witnesses for the prosecution and the other independent evidence and P18 corroborated the evidence adduced by the prosecution. The evidence against the appellant was overwhelming. At the conclusion of the case for the prosecution the learned trial judge therefore held that a prima facie case had been made out against the appellant on the offences charged.

[22] With regard to the appellant's defence the learned trial judge held that the appellant had failed to raise any reasonable doubt in the prosecution case. According to the learned trial judge the appellant's defence was not reasonable as it was inconsistent with the evidence of the witnesses for the prosecution and it contradicted with his admission in P18. At pp 13–14 of his grounds of judgment the learned trial judge said:

> Pembelaan tertuduh tidak disokong oleh keterangan lain dan didapati tidak munasabah. Bahkan ia didapati tidak konsisten dengan keterangan saksi-saksi pendakwa dan bertentangan dengan pengakuan tertuduh dalam P18 dan juga keterangan-keterangan bebas lain yang ada. Tertuduh didapati gagal menimbulkan apa-apa keraguan ke atas kes pendakwaan terhadapnya. Penjelasan tertuduh bahawa apabila dia balik daripada Cini dan masuk ke rumahnya melalui pintu depan dia nampak anak-anaknya seperti tidur di ruang tamu adalah tidak mungkin kerana SP7, SP9 dan SP11 yang datang ke rumah itu antara pukul 3.00–3.30 petang itu mendapati pintu depan rumah berkunci dengan mangga daripada luar. Pembelaan

A itu juga bertentangan dengan penemuan serta kandungan surat-surat P12B, P12C dan P13A serta papan lapis P9A dan P10A yang ditemui di tempat kejadian yang jelas menggambarkan apa yang berlaku memang dirancang dan sengaja dilakukan sebagai tindak balas tertuduh kepada perbuatan SP7 dan SP9 kepadanya. Ia juga tidak selaras dengan pengakuan tertuduh sendiri dalam P18.

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THE APPEAL

[23] Before us, learned counsel for the appellant raised a number of issues as grounds of appeal and they are as follows:

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(a) the appellant's fitness to stand trial;

(b) admissibility of P18;

(c) issue of the handwriting; and

D (d) extra-judicial confession.

FITNESS TO STAND TRIAL

E **[24]** At the outset of the trial the appellant's counsel informed the learned trial judge that he had reasons to suspect that the appellant was not fit to stand trial and learned counsel applied for the appellant to be sent for medical observation pursuant to s 342 of the Criminal Procedure Code ('CPC'). What transpired in the trial court can be seen in the notes of proceedings at pp 2–4 of the appeal record. The learned trial judge held the appellant was fit to stand

F trial. At p 4 of the appeal record the learned trial judge made the following ruling:

Mahkamah:

G Saya telah bertanya tertuduh berbagai soalan peribadi dan keluarganya dan mendapati dia boleh menjawabnya dengan baik dan mempunyai ingatan yang baik. Dia juga mengakui telah berjumpa peguam dua kali tapi tak banyak bercerita. Daripada perbualan itu saya dapati tertuduh tidak langsung menunjukkan apa-apa sebab yang boleh menimbulkan syak bahawa dia mempunyai masalah mental atau ketidakwarasan untuk menerima arahan atau membela dirinya. Oleh itu

H permohonan ditolak kerana tiada asas untuk dibuat …

[25] Learned counsel for the appellant contended that the learned trial judge made a decision on this issue without giving due and proper consideration of

I the appellant's fitness as he merely asked the appellant personal questions and questions pertaining to the appellant's family. The learned trial judge did not record the questions asked and the answers given by the appellant. It was further argued that the learned trial judge did not give a reasoned decision as to why he disallowed the application by the appellant's counsel.

[26] Learned counsel for the appellant submitted that it is important for the learned trial judge to ensure that procedurally the process of assessing the appellant's fitness to plead is properly carried out. In order to enable the court to properly determine the issue the appellant's counsel submitted that the following must be satisfied, namely:

(a) the appellant must be able to understand what it was that he was charged with;

(b) the appellant must be able to understand the nature of the proceeding;

(c) the appellant must be able to follow the course of the proceeding;

(d) the appellant must be able to understand the substantial effect of any evidence that may be given against him; and

(e) the appellant must have sufficient capacity to make an able defence through his counsel.

In support of that contention learned counsel cited the cases of *Public Prosecutor v Misbah bin Saat* [1997] 3 MLJ 495; [1998] 1 CLJ 759 and *Kesavarajah v The Queen* (1994) 181 CLR 232.

[27] In *Misbah bin Saat* one of the issues raised in the appeal was the accused's fitness to plead. Visu Sinnadurai J cited the principle of law stated in the early English case of *Rex v Dashwood* [1943] KB 1 that it is a cardinal principle of law that no man can be tried for a crime unless he is in the mental condition to defend himself. In determining the issue of fitness of the accused to stand trial the court should not only rely on the evidence of the medical officer but should apply a reasonable and common sense test. At pp 503-504 (MLJ), PP 767–768 (CLJ) the learned judge said:

> ... whether the accused person, because of mental defect, fails to come up to certain minimum standards which he needs to equal before he can be tried without unfairness or injustice to him.

In determining this issue, Smith J pointed out that the court ought to be satisfied of the following (at p 48):

> He (the accused) needs I think, to be able to understand what it is that he is charged with. He needs to be able to plead to the charge and to exercise his right of challenge.
>
> He needs to understand generally the nature of the proceeding, namely, that it is an inquiry as to whether he did what he is charged with.
>
> He needs to be able to follow the course of the proceedings so as to understand what is going on in court in a general sense though he need not, of course, understand the purpose of all the various court formalities.

A He needs to be able to understand, I think, the substantial effect of any evidence that may be given against him; and he needs to be able to make his defence or answer to the charge. Where he has counsel he needs to be able to do this through his counsel by giving any necessary instructions and by letting his counsel know what his version of the facts is and, if necessary, telling the court what it is.

B He need not, of course, be conversant with court procedure and he need not have the mental capacity to make an able defence; but he must, I think, have sufficient capacity to be able to decide what defence he will rely upon and to make his defence and his version of the facts known to the court and to his counsel, if any.

C If the court is so satisfied that the person is fit for trial, the trial should then proceed.

[28] Section 342 of the CPC deals with an accused who is suspected to be of unsound mind at the time the trial against him starts. The court is required to inquire into the state of mind of the accused at the time the trial is being held. D This section corresponds with s 32 of the Indian CPC 1973. The CPC uses the word 'suspect' as opposed to the word 'believe' used in the corresponding Indian section.

E **[29]** In the instant case learned counsel for the appellant had applied to the public prosecutor on 31 January 2003 for the public prosecutor to take action under s 342(5) of the CPC so that the appellant be sent to a mental hospital for observation. The application was rejected by the public prosecutor on the ground that there was no basis for such action.

F **[30]** The learned trial judge, after asking questions and evaluating the answers given by the appellant, was satisfied that the appellant could answer the questions posed to him well and the appellant had a good memory. It did not appear to the learned trial judge that the appellant was of unsound mind and G was incapable of making his defence. That was the reason given by the learned trial judge in dismissing the appellant's application under s 342 of the CPC. As such it was not correct to say that the learned trial judge did not give the reasons for dismissing the appellant's application.

H **[31]** The facts in the instant case can be distinguished from the facts in *Misbah bin Saat* and *Kesavarajah* as in those two cases there were medical reports to say that the accused were suffering from mental disorder. In the instant case the appellant did not have any history of mental disorder.

I **[32]** It is our decision that the test applied by the learned trial judge in determining the appellant's fitness to stand trial in the instant case, which can be regarded as a 'reasonable and common sense' test, was proper and sufficient under the circumstances. Consequently we found no merit in the complaint by learned counsel for the appellant that the learned trial judge did not properly

determine the issue whether the appellant was fit to stand trial.

ADMISSIBILITY OF P18

[33] P18 is the cautioned statement of the appellant. A trial within trial was held by the learned trial judge to determine its admissibility because when the prosecution wanted to tender the document it was objected by the defence on the ground that it was not given voluntarily. At the end of the trial within trial the learned trial judge held that the cautioned statement was given voluntarily by the appellant and the learned trial judge admitted it as P18. At pp 152–53 of the appeal record the learned trial judge ruled:

> Mahkamah:
>
> Lakaran terhadap ID18 berlandaskan dakwaan bahawa percakapan itu tidak dibuat dengan sukarela kerana terdapat unsur-unsur ugutan, paksaan atau dorongan. Tertuduh mendakwa dia telah dipukul, diterjah kakinya oleh SPP7 bagi memaksa dia memberi percakapan. Didapati dakwaan ini tidak berasas dan tak mungkin berlaku. SPP7 hanya mengenal Tertuduh pada 5.3.2002 daripada Hospital Tengku Ampuan Afzan ke lokap Pekan dan tidak berjumpanya lagi sehingga 7.3.2002 tengahari sedangkan percakapan ID18 dirakam pada 7.3.2002 pagi. Dairi lokap mengesahkan penglibatan SPP7 hanya selepas 7.3.2002. Juga tiada peluang bagi SPP7 melakukan apa yang didakwa sebelum rakaman ID18 kerana Tertuduh pertama kali dikeluarkan daripada lokap pada 7.3.2002 jam 9.50 pagi, sedangkan rakaman dibuat pada pukul 10.30 pagi. Hal keadaan ini juga mengesah kemungkinan Tertuduh didesak dengan apa cara jua untuk merakam percakapan. Dia belum lagi disoal siasat setelah sehingga berada di Hospital. Mengenai dakwaan yang amaran tidak diterangkan, penjelasan tidak lagi diperlukan apabila Tertuduh mengaku dia faham dan tidak memerlukan penjelasan. Kehadiran SPP1 iaitu Ketua Unit Perangkaan di dalam mesyuarat tidak menghalangnya sebagai pegawai perakam. Dalam semua hal keadaan ini didapati ID18 telah dibuat secara sukarela oleh Tertuduh dan diterima sebagai keterangan. Ditanda P18.

[34] Learned counsel for the appellant submitted that because of the circumstances the statement was recorded there was doubt as to whether the statement was voluntarily given by the appellant. Learned counsel further referred to the appellant's evidence which said that the appellant was assaulted and the police told him they would send him back to Indonesia if he confessed to the murder of his children. The facts showed that the appellant was hospitalised for five days after the incident as he was suspected to have consumed poison. After his discharge he was sent to the police lock-up. The statement was recorded from him two or three days after he was discharged. The question posed by learned counsel was whether the appellant was in a proper state of mind when he gave the statement given the fact that the appellant was trying to commit suicide.

[35] A statement or confession is said to be given voluntarily if it is given by an accused without fear or prejudice or hope of advantage created by a person in authority, or by oppression (see *Dato Mokhtar bin Hashim & Anor v Public Prosecutor* [1983] 2 MLJ 232). In *Tan Ewe Huat v Public Prosecutor* [2004] 1 MLJ 559; [2004] 1 CLJ 521 the Federal Court held, inter alia, that there is no burden on an accused to prove that the statement recorded from him is involuntary. The burden lies on the prosecution to show positively that the statement was voluntarily given. There is no burden on the accused to raise a reasonable doubt as to the voluntariness of a cautioned statement. The only burden on the accused is to show suspicious circumstances surrounding the making of, or recording of, the cautioned statement.

[36] The appellant alleged that the cautioned statement was not voluntarily given by him on 7 March 2002. He alleged that before the statement was recorded from him by ASP Abdul Aziz bin Hj Mohd Noor ('PW12') he was brought to the investigation room by Det L/Kpl Yusof bin Mohd ('SPP7'). Inside the room SPP7 scolded him and told him to confess to the murders. According to him SPP7 hit his leg.

[37] The appellant further alleged that he did not understand the caution read by ASP Abdul Aziz to him as ASP Abdul Aziz did not explain the caution to him. The appellant also alleged that ASP Abdul Aziz threatened him by saying that if he refused to give the statement he would be charged in court and ASP Abdul Aziz had promised to send him back to Indonesia.

[38] The prosecution called Det L/Kpl Yusof bin Mohd to give a rebuttal evidence. He denied meeting the appellant in the morning. He only met the appellant at about 2.45pm on 7 March 2002 to escort the appellant to see C/Insp Tuan Kamarul Azman ('PW13') as PW13 wanted to take the samples of handwriting from the appellant. He denied threatening or assaulting the appellant.

[39] ASP Abdul Aziz testified that before he started recording the statement from the appellant he read over the caution to the appellant and asked the appellant whether he understood the caution. The appellant replied that he understood the caution. ASP Abdul Aziz asked the appellant whether he needed any further explanation on the caution and the appellant replied that he did not need any further explanation.

[40] ASP Abdul Aziz said he did not make any inducement, threat or promise to the appellant before recording the statement. The appellant also did not complain to him that he was giving the statement because of an inducement, threat or promise. According to ASP Abdul Aziz the appellant gave the statement voluntarily.

[41] As stated earlier the learned trial judge found that the cautioned statement was given by the appellant voluntarily. It was the finding of the learned trial judge that there was no truth to the appellant's allegation that Det L/Kpl Yusof bin Mohd assaulted him as the evidence showed that on 5 March 2002 Det L/Kpl Yusof only brought the appellant from Hospital Tengku Ampuan Afzan to the police lock-up. L/Kpl Yusof only saw the appellant again on 7 March 2002 at about 2.45pm. It was after the appellant had given his statement to ASP Abdul Aziz. As such we agreed with the finding of the learned trial judge that there was no basis for the appellant's allegation against Det L/Kpl Yusof.

[42] With regard to the appellant's allegation that the caution was not explained to him the learned trial judge held that since the appellant understood the caution read to him there was no necessity to explain the caution to him. On this issue the Federal Court held in *Mohd Zaiham bin Mislan v Public Prosecutor* [2009] 6 MLJ 737; [2010] 1 CLJ 1 that:

> (1) There is no statutory requirement under the law, be it the Criminal Procedure Code or the Act, that the caution administered by the recording officer to the accused person must be explained. The only essential requirement for the statement to be made admissible is that it must be voluntarily given and to arrive at that finding, the trial judge must assess all the facts and circumstances that surround the giving of the statement. In the present case, since the appellant and SP9 were Malays, the fact that the caution was administered, and the statement recorded, in the Malay language was a non-issue. It was recorded in P27 that the appellant had answered in the affirmative when asked whether he understood the caution and whether he still wanted to make a statement pertaining to the arrest since he understood the caution. The appellant also reaffirmed that he did not supply the statement under threat, promise or inducement.

[43] The appellant came to this country in 1979. ASP Abdul Aziz testified that the appellant could speak Malay well. As such he had no difficulty understanding Malay. In P18 ASP Abdul Aziz recorded that the appellant had answered in the affirmative when asked whether he understood the caution. The learned trial judge ruled that there was no necessity for ASP Abdul Aziz to explain the caution to the appellant as the appellant had understood the caution. We therefore agreed with the finding of the learned trial judge on this issue.

[44] We had carefully scrutinised the evidence adduced in the trial within trial and we were satisfied that P18 was properly admitted. The learned trial judge had properly considered the evidence and the law and had come to a correct finding. We therefore rejected the appellant's contention on the

admissibility of P18.

Issue of the handwriting

[45] Issue of the handwriting related to the documentary evidence of P12A to C, P13A, P14A–C and P15A–C which were examined and analysed by PW4.

[46] Learned counsel for the appellant submitted that PW4, while giving evidence of his opinion on the signatures found in P14A–C, did not explain how he came to the conclusion that they belonged to the same person whose signature appeared in P12C. Section 51 of the Evidence Act 1950 provides that the opinion of any living person is relevant, the grounds on which his opinion is based are also relevant. Learned counsel for the appellant therefore contended that the evidence of PW4 had no evidential value at all as he did not give his reasons for his finding. In support of his contention learned counsel for the appellant cited the cases of *United Asian Bank Bhd v Tai Soon Heng Construction Sdn Bhd* [1993] 1 MLJ 182 and *Sim Ah Song & Anor v Rex* [1951] MLJ 150.

[47] The case of *United Asian Bank Bhd* is a civil case. One of the issues argued in the appeal before the Supreme Court was the evidence of the handwriting expert on the forged cheques. Anuar J (as he then was) speaking for the court, said at pp 187–188:

> In a civil case and more so in a criminal case, the evidence of an expert on handwriting unsupported by cogent data showing the process by which he came to his conclusion is not worth the paper on which it is written and any reliance upon such evidence would, in our judgment, constitute a serious misdirection warranting interference by an appellate tribunal. However, having said that, we are of the opinion that the principle contended for has no application to the facts of this case.

[48] In *Sim Ah Song & Anor* an expert witness was called to explain the documents relating to a public lottery whether any of the documents included 'account, memorandum or record of stakes or wagers in or relating to a lottery'. Brown AG CJ said at p 151:

> The business of an expert witness is to draw upon the store of his knowledge and experience in order to explain some matter which his experience should qualify him to understand. He is quite entitled to express his opinion, which indeed is the natural corollary of his explanation. But a bare expression of his opinion has no evidential value at all. Unless he gives an explanation which supplies the understanding of the subject which the court lacks, the court is in no better position than it was before to determine the question which it is its duty to determine, and if the court acts upon a bare expression of the expert's opinion the determination of the question becomes that of the expert and not of the court.

[49] The learned trial judge, in his judgment, made the following finding of fact with regard to the handwriting:

> Tiada apa yang boleh meragukan tentang keterangan SP4 mengenai tulisan dan tandatangan tertuduh pada surat-surat P12B, P12C dan P13A. Memang benar keseluruhan surat-surat P12B dan P13A ditulis dalam huruf besar dan juga ditandatangan dengan nama dalam huruf besar tetapi surat P12C ditulis dan ditandatangan dengan nama dalam huruf kecil dan juga huruf besar. Walaupun tulisan contoh P14A–C berupa satu ayat yang ditulis berulang kali SP4 tidak menghadapi masalah membuat perbandingan. Daripada persamaan dan perbezaan ciri-ciri penulisan seperti struktur, *sequence of stroke*, tekanan dan *shading*, jajaran tulisan, saiz tulisan, kesan retracing terhadap sesuatu huruf dan cara perbentukan huruf SP4 dapat membuat kesimpulan bahawa orang yang menulis tulisan tangan P14A–C adalah orang yang sama yang menulis tulisan tangan P12B, P12C dan P13A. Mahkamah menerima rumusan yang dibuat kerana ia dibuat atas asas-asas yang teguh. SP4 mengakui tidak diminta membuat analisis tandatangan tetapi daripada pemeriksaan mata kasarnya di Mahkamah dia berpendapat kemungkinan tandatangan di P12C adalah tandatangan sebenar orang yang menandatangan P14A–C. Apapun jua rumusan SP4 itu disokong oleh keterangan SP8 yang pasti P12B, P12C dan P13A ditulis oleh bapanya tertuduh kerana dia pernah melihat tulisan bapanya. Dia juga mengecam P12B dialamatkan kepada ibunya yang dirujuk sebagai 'Leha', P12C kepada dirinya yang dirujuk sebagai 'Endon' dan P13A kepada bapa saudaranya yang dipanggil Aseng dan ibu saudaranya 'Perisan'. Tertuduh sendiri juga — sepatutnya Perisan). Oleh itu penemuan surat-surat P12B, P12C dan P13A di rumah tertuduh esoknya juga turut menyokong keterangan SP4 dan SP8 tentang siapa penulisnya dan kepada siapa ia ditujukan. Dan kandungan surat-surat itu menerangkan hasrat tertuduh yang menulisnya untuk mati bersama anak-anaknya itu dengan menyatakan sebab-sebab dia berbuat demikian serta pesanannya kepada kedua orang ipar yang dinamakan itu. Dia juga dijumpai dalam keadaan lemah kerana keracunan pada petang esoknya apabila dijumpai bersama mayat anaknya di rumah itu, fakta yang selaras dengan hasratnya untuk mati bersama anak-anaknya itu.

[50] Having examined PW4's evidence and the judgment of the learned trial judge on this issue we were of the opinion that the principle contended by the appellant's counsel has no application to the facts of this case. PW4, as rightly found by the learned trial judge, had clearly stated sufficient reasons to support his conclusions. Furthermore there is the corroborative evidence of PW8 who is familiar with the appellant's handwriting. The learned trial judge in his very careful judgment accepted the conclusions made by PW4 that the handwritings found in P12B, P12C and P134 belonged to the same person who wrote on P14A and P14B. We were unable to find any misdirection by the learned trial judge on this point. We accordingly upheld the learned trial judge's findings on this point.

Extra-judicial confession

[51] The learned trial judge at p 11 of the grounds of judgment held that the

appellant had confessed to the killing of his three children via the contents of P9A, P10A, P12B and P12C. The learned trial judge said:

> Kandungan P9A dan P10A serta surat-surat P12B, P12C dan P13A menerangkan tanpa keraguan yang penulisnya atau Akwang yang dikenalpasti sebagai tertuduh mengakui, melalui perkataan-perkataan yang digariskan di atas, yang dia telah membunuh tiga orang anaknya yang ada bersamanya dan akan turut membunuh dirinya sendiri. Dengan itu dia telah minum racun. Tetapi umurnya masih panjang.

[52] Learned counsel for the appellant referred to those confessions as 'extra-judicial confessions' and submitted that before any such confession could be accepted by the court the learned trial judge must undergo the following process:

(a) to ascertain whether the appellant did say/write the things he was said to have said/wrote; and

(b) to ascertain whether the confession is true and reliable.

[53] In support of his submission learned counsel for the appellant cited the cases of *Harold White v The King* AIR 1945 PC 181 and *Sandra Margaret Birch, v Public Prosecutor* [1978] 1 MLJ 72. In *Sandra Margaret Birch* Syed Agil Barakbah J (as he then was) made the following observation on a statement which amounts to a confession:

> The next ground with regard to the statement was whether the learned President failed to consider that it was true, apart from being voluntary. It was held by the Court of Appeal in *Abu bin Hussin v Public Prosecutor* [1959] MLJ 5 that where an accused denied making certain statements recorded in the confession before a magistrate, two entirely separate and distinct questions had to be considered in relation to the so called confession: (i) whether in fact the appellant did say the things he was said to have said, and (ii) whether or not these things were true. The jury should have been told that if they were satisfied the appellant did make the statement they should then consider whether it was true and that they should do so by considering it in the light of the rest of the prosecution evidence and in the light of the different story told by the appellant in the witness box. In *Yaacob v Public Prosecutor* [1966] 1 MLJ 67 the Federal Court held the question whether a statement is free and voluntary is a question of fact and must be decided on the evidence, both that tendered by the prosecution and that, if any, tendered by the accused. The accused person is entitled to have the verdict of the jury on the weight and value of the confession. In the present case, the learned President sitting alone is both judge and jury and should have borne in mind particularly whether or not the statement made by the appellant (exh P12) was true and, if so, to consider giving whatever weight and value to the statement. The trial President should also caution himself that statements or confessions are not always true and that they must be checked in the light of the whole evidence on the record in order to see if they carry conviction (*White v The King* AIR 1945 PC 181).

[54] As stated earlier the learned trial judge, in his very careful judgment, held that P12B, P12C and P13A were written by the appellant. With regard to P9A and P10A the learned trial judge also held that they were also written by the appellant. In his judgment the learned trial judge said:

> SP7 dan SP9 tidak tahu apa yang tertulis pada P9A atau P10A kerana mereka buta huruf. Polis yang memberitahu mereka yang nama mereka ada tercatat di situ. SP7 tahu tertuduh marah kepadanya kerana membawa dua orang anaknya tinggal bersama SP9 di Melaka tetapi tujuannya ke sana adalah untuk bekerja dan memberi kemudahan kepada tertuduh untuk mencari kerja. Mereka pernah bergaduh atas sebab itu tetapi itu dianggap perkara biasa sahaja. Dia rasa apa yang berlaku disebabkan tertuduh marah kerana dia bermain ceki di rumah bapanya atau sebab dia tak balik ke rumah mereka pada malam itu. SP9 sedar yang tertuduh mencurigainya dan takut anak-anaknya SP8 dan Julaika dirampas olehnya. Tertuduh pernah menalipon SP9 dan menuduh dia akan menjual anaknya sebagai pelacur dan ambil hasil jualan itu. Kandungan P9A yang dituju kepada SP7 dan P10A yang dituju kepada SP9 jelas konsisten dan menyokong dakwaan SP7 dan SP9 itu. Antara yang tercatat dalam P9A adalah seperti berikut:
>
> LEHA: AWAK NAK BAWA LARI ANAK KITA SEMUA YA! *INILAH AKIBATNYA LEHA* KALAU TAMAK. SENANGKAN KALAU DAH JADI BEGINI. HATI SAYA PUAS LEHA … SAYA RASA LEHA LEBIH LAGI PUAS KAN? *SEKARANG MEREKA DAH PERGI. PERGI TAKKAN KEMBALI LAGI LEHA* …
>
> ... APA LEHA TAK TAHU YANG KAKAKMU MAH ITU IBU AYAM? LEHA KALAU ANAK TERUS DALAM JAGAAN MAH, SAYA PERCAYA SATU HARI NANTI MESTI MAH BAWA JUAL. TENGOK SAJA — KAMU. JANJI DUIT MARI.
>
> Antara kandungan P10A ialah:
>
> MAH: *PUAS HATI KAMU — KALAU DAH JADI MACAM INI. ANAK ORANG NAK DIKONTROL* … MAH TAKKAN DAPAT ANAK SEBAB ENJIN YANG ADA PADA MAH SUDAH KARAT … MAH MALULAH SIKIT! KALAU DAH PELACUR PELACURLAH JANGAN NAK BERLAGAK …

[55] In his judgment the learned trial judge held that what was said by the appellant in his confession was consistent with the evidence of SP7 and SP9. P9A was addressed to PW7 and P10A was addressed to PW9. From the evidence of PW7 and PW9 it could be ascertained the reason for the appellant's action. The learned trial judge was also satisfied that what was said by the appellant is true and reliable. On the evidence available we found the two tests laid down in *Abu bin Hussin v Public Prosecutor* [1959] MLJ 5 which was referred to in *Sandra Margaret Birch* had been satisfied.

[56] Learned counsel for the appellant further submitted that even assuming that there were extra-judicial confessions, they are not sufficient for the court to rely on as a basis for the conviction of the appellant unless they are supported by other corroborative evidence.

[57] It must be noted that the prosecution had tendered the appellant's cautioned statement as the prosecution evidence. In P18 the appellant also confessed that he killed the three children. There was also the oral evidence of PW7, PW9 and PW11. They told the court what they saw in the house when they went to the house between 3–3.30pm on that day. The evidence showed that the appellant was found with the three children and he had all the opportunity to kill the children. There was no one else in the house nor was there a suggestion that the three children were killed by an outsider as there was no sign of break in. In fact the front door was locked with a padlock. He was angry and disappointed with his wife ('SP7') and SP9. He consumed poison to commit suicide. These circumstantial evidence also corroborated the extra-judicial confessions. For that reason we rejected the arguments advanced to us by learned counsel for the appellant.

[58] We had also considered the defence put up by the appellant. We agreed with the finding of the learned trial judge that the appellant's defence when tested against the totality of the evidence adduced is unreasonable and inconsistent with P18, the extra-judicial confessions, the evidence of the witnesses for the prosecution and other independent evidence. We found the learned trial judge had correctly concluded that the appellant had failed to raise any reasonable doubt in the prosecution case and the prosecution had proved its case against the appellant beyond reasonable doubt.

[59] We had carefully scrutinised the evidence and the grounds of judgment and on a consideration of the entire evidence we were satisfied that the appellant was rightly convicted. For the reasons given above the appellant's appeal was accordingly dismissed and the decision of the learned trial judge affirmed.

Appeal against conviction and sentence dismissed.

Reported by Kohila Nesan